

REMARKS

Request To Make Office Action Non-Final

It is respectfully requested that the Examiner reconsider the finality of the present Office Action and make the Office Action non-final. This request is made because of an erroneous rejection explanation which occurred in the non-final Office Action dated May 6, 2003 and which, although seemingly corrected in the instant Final Office Action, was again repeated on page 3 of the instant Final Office Action. It is respectfully submitted the repeated erroneous rejection explanation has denied Applicants the opportunity to set forth their best argument and response for patentability. At the very least, it compromises the clarity of the file history to which Applicants and the public are entitled.

More specifically, in the May 6, 2003 Office Action, the Examiner stated that

"Solem et al. discloses a device comprising a first distal anchor and second proximal anchor (Fig. 10) connected to each other by a fixed length connecting member (8)."

Since Solem et al. includes a Fig. 10, the above rejection explanation was accordingly treated and responded to as written.

Now, the instant Final Office Action dated October 14, 2003 apparently seeks to correct this explanation by stating at page 2,

"The prior office action should have cited ref. 10, not Fig. 10."

But, on page 3, the Office Action again states

"Solem et al. discloses a device comprising a first distal anchor and second anchor (Fig. 10) connected to each other by a fixed length connecting member (8)."

This is the same, exact, explanation that appeared in the first Office Action of May 6, 2003.

Even though "ref. 10" was intended, and not "Fig. 10" in connection with the Solem et al. reference and rejection, correcting this explanation now in a Final Rejection makes it impossible for Applicants to respond to appropriately. For example, claim 33 has been amended to define that one anchor is moveable in one direction, but not the other direction, after deployment. This is structure and function nowhere attributed to the hooks 10 (ref. 10) of Solem et al. Had the Office Action of May 6, 2003 referred to "ref. 10" and not "Fig. 10", this distinguishing limitation could have been added to claim 33 before the

application was under Final Rejection. Still further, the responsive comments with respect to claims 1-6, 8-13, 15, 17, 33-37, and 43 would have been different.

It is therefore respectfully requested that the finality of the instant Office Action be withdrawn to permit the entering of this paper as of right. If this request is denied, it is respectfully requested that this amendment be entered for reducing outstanding issues on appeal by the cancellation of claims 37-41.

Rejections Based On The Prior Art

Claims 1, 2, 7, 8, 14, 19-32, and 42 stand rejected under 35 U.S.C. 102(e) as being anticipated by Langberg et al., WO 01/54618 A1. Claims 1-6, 8-13, 15, 17, 33-37, 39, and 43 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Solem et al., U.S. Patent No. 6,210,432. Lastly, claims 1, 15-18, and 37-41 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Pai et al., USPAP 2003/0078465.

Claims 1-36, 42, and 43 remain in the application with claims 37-41 having been cancelled by this paper. All rejections, except for the 35 U.S.C. 102(e) rejection of claims 33-36 based on Solem et al. are respectfully traversed. It is respectfully submitted that each of claims 1-36, 42, and 43 is allowable over the art of record. Favorable reconsideration is respectfully urged.

With respect to the 35 U.S.C. § 102(e) rejection of claims 1, 2, 7, 8, 14, 19-32, and 42 based on Langberg et al., the Examiner is reading Langberg's flexible support 58 as the connecting member and ends 42 and 43 as the anchors. Even if end 42 and 52 are anchors, however, they are not configured so that "the second anchor may be displaced proximally to effect the geometry of the mitral valve annulus and released to maintain the effect on the mitral valve geometry" as defined in and required by claims 1, 8, and 19.

With respect to dependent claims 2 and 20, Langberg's "anchor" is not "configured to anchor against distal movement and moveable in a proximal direction". With respect to claim 23, Langberg's connecting member is not rigid.

With respect to claims 26-32, independent claims 26 and 29 require the method step of "displacing the second anchor proximally to effect the geometry of the mitral valve annulus". With respect to claim 32, Langberg does not disclose the step of locating a distal anchor proximal to the circumflex artery.

In view of the above noted deficiencies in Langberg et al., it is not seen how Langberg et al. may be considered an anticipation of claims 1, 2, 7, 8, 14, 19-32, and 42.

Langberg et al. fails to show, describe, or even suggest the above noted aspects of the claims. Favorable reconsideration and withdrawal of the 35 U.S.C. § 102(e) rejection based on Langberg et al. is respectfully requested.

With respect to the 35 U.S.C. § 102(e) rejection based on Solem et al., the Examiner appears to be reading the barbs 10 in Figs. 2-7 as the anchors. The barbs actually pierce the patient's tissue as Solem et al. describes at column 4, lines 24-25. There, Solem et al. state that the barbs "dig into the walls of the coronary sinus and into the heart." Solem et al. do not even suggest that after a first anchor has been deployed to anchor, a second anchor may be "displaced proximally to effect the geometry of the mitral valve annulus and released to maintain the effect on the mitral valve geometry" as defined in and required by claim 1.

Further with respect to Solem et al., claim 33 has been amended to require that one anchor is moveable in one direction, but not in the other direction, after deployment. Hence, claim 33 and claims 34-36 distinguish over Solem which does not describe or show such structure or function.

With respect to claim 43, the Solem et al. devices work in an opposite way than the devices of the present invention. In Solem et al., the devices, and thus the mitral valve annulus, have a greater radius of curvature when initially placed in the coronary sinus and a smaller radius of curvature after deployment and providing therapy. Specific attention is directed to claim 43 which defines the device as "having a first radius of curvature when initially placed in the coronary sinus adjacent the mitral valve annulus and a second radius of curvature when providing therapy to the mitral valve annulus from within the coronary sinus, the second radius of curvature being greater than the first radius of curvature". (Emphasis added). Hence, Solem et al. not only fails to show, describe, or suggest the device defined in claim 43, it actually points in the opposite direction.

In view of the above, it is respectfully submitted that claims 1-6, 8-13, 15, 17, 33-36, and 43 are clearly allowable over Solem et al. Such favorable reconsideration is respectfully urged.

Lastly, with respect to the 35 U.S.C. § 102(e) rejection based on Pai et al., it also does not show or suggest any of the structure and function noted above. Fig. 8A of Pai et al. shows no structure of anchors 32 except for a schematic illustration thereof. No anchor structure is shown, described, or even suggested which is capable of functioning as defined in claims 1 and 15-18. Hence, it is respectfully requested that the 35 U.S.C. §

102(e) rejection of claims 1 and 15-18 be withdrawn. Such favorable reconsideration is respectfully requested.

Request For Entering Amendment

It is respectfully requested that this amendment be entered, either as of right should the request to withdraw the finality of the Office Action be granted or in view of the fact that this amendment places the application into better condition for appeal.

CONCLUSION

It is respectfully submitted that it has been clearly demonstrated that all pending claims are allowable over the art of record. Allowance of the application is respectfully urged.

In the event additional fees are due as a result of this amendment, payment for those fees has been enclosed in the form of a check. Should further payment be required to cover such fees you are hereby authorized to charge such payment to Deposit Account No. 07-1897.

Should a telephone conference with the undersigned be considered helpful in resolving any outstanding issues and advancing the application to issue, such a conference with the undersigned is invited and would be gratefully appreciated.

Dated this 12th day of December, 2003.

Respectfully submitted,

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